

RWANDA / JUDGMENT

NKONGORI v. RWANDA CIVIL AVIATION AUTHORITY (RCAA) N'UNDI

RADAA 0001/10/CS

COURT

Supreme Court

DECIDED

6 August 2010

CASE / FILE NUMBER

RADAA 0001/10/CS

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NKONGORI v. RWANDA CIVIL AVIATION AUTHORITY (RCAA) N'UNDI

- Source: Amategeko
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- Date: 2010-08-06
- Case/document no.: RADAA 0001/10/CS
- Collection: Supreme Court

Text

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NKONGORI v. Rwanda Civil Aviation Authority (RCAA) n'undi [Rwanda URUKIKO RW'IKIRENGA – R.AD.AA 0001/10/CS (Mutashya, P.J., Hatangimbabazi na Rugabirwa,J.) 06 Kanama 2010]

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Igenwa ry'igihano gihatira kurangiza urubanza – Uwishyura amafaranga y'igihano gihatira kurangiza urubanza igihe ari ikigo cya leta – Urukiko rugena igihano gihatira umutegetsi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa – Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 350 niya 351.

Amategeko agenga imiburanishirize y'imanza z'imbonezamubano – Itangwa ry'ikirego bwa mbere ku rwego rw'ubujurire – Ikirego nticyakirwa igihe umuburanyi agitanze bwa mbere mu rukiko rw'ikirenga kitarageze kigibwaho impaka mu nkiko zabanje. Incamake y'ikibazo: nyuma yaho Nkongori atsindiye Rwanda Civil Aviation Authority (RCAA) mu Urukiko Rukuru, rwayitegetse kumuha 4,946,406 Frw y'ibitarane by'imishahara by'amezi atandatu (6) atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama y'urubanza. Rwanda Civil Aviation

Authority (RCAA) yajuririye urukiko rw'ikirenga maze rwemeza ko imikirize y'urubanza rwajuririye idahindutse mu ngingo zarwo zose, runategeka ko urwo rubanza rurangizwa uko rwaciwe. Nkongori yatanze ikirego mu rukiko rw'ikirenga arega Rwanda Civil Aviation Authority (RCAA) hamwe na Masozera umuyobozi mukuru wayo kubera ko batubahirije ibyemezo byi nkiko byavuzwe haruguru; akaba asaba ko bacibwa igihano kibahatira kurangiza urubanza rwabatsinze ikindi kandi asaba nuko yamuha amafaranga ya decompete finale, icyemezo cy'imirimo yakoze hamwe nibindi yemerewen'amategeko. Incamake y'icyemezo: 1. Kuba uregwa atarangiza urubanza nta nitabe kugirango kugirango asobanure impamvu zatumye atarurungiza bigaragaza ko nta mpamvu zifatika zamubujije kururungiza.

2. Urukiko rugena igihano gihatira umutegetsi ubwe kubahiriza urubanza mu gihe cyose ruzaba rutarangizwa kubwibyo rero umutegetsi ni Umuyobozi Mukuru wa Rwanda Civil Aviation Authority kuko ariwe ushinze ubuyobozi bw'ibikorwa n'imirimo byacyo bya buri munsu akaba ariwe ubwe ugomba gutanga amafaranga y'igihano gihatira kurangiza urubanza buri kwezi kuva uru rubanza rusomwe kugeza ku munsu urubanza R.AD.A 0012/07/CS ruzarangirizwaho.
3. Ikirego nticyakirwa igihe umuburanyi agitanze bwa mbere mu rukiko rw'ikirenga kitarageze kigibwaho impaka mu nkiko zabanje. Ikirego kirakiriwe. Ikirego gifite ishingiro kuri bimwe. Amagarama y'urubanza aherereye ku umuyobozi mukuru wa Rwanda Civil Aviation Authority .

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Amategeko yashingiweho: Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 350 niya 351 Itegeko Ngenga n° 14/2004 ryo kuwa 26/05/2004 ryishyiraho amategeko rusange yerekeye ibigo bya Leta, ingingo ya 5 niya 6 Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] Urukiko Rukuru rwa Repubilika, i Kigali, rwaciwe urubanza R.AD. 0055/06/HC/KIG kuwa 15/06/2007, rwemeza ko Nkongori John atsinze Leta y'u Rwanda na Rwanda Civil Aviation Authority. [2] Urwo Rukiko rwategetse Leta y'u Rwanda guha Nkongori John 5.000.000 Frw y'indishyi z'uho yasezerewe k'Ubuyobozi bukuru bwa Régie des Aéroports du Rwanda (Rwanda Civil Aviation Authority) mu buryo bunyuranyije n'amategeko kuko atamenyeshejwe icyemezo yafatiwe kimuhagarika cyangwa kimusezerera ku kazi. [3] Rwanda Civil Aviation Authority yategetswe guha Nkongori 4.946.406 Frw y'ibitarane by'imishahara by'amezi atandatu (6) atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama y'urubanza. [4] Ku bujurire bwa Leta y'u Rwanda (Rwanda Civil Aviation Authority), Urukiko rw'ikirenga rwaciye urubanza R.AD.A 0012/07/CS kuwa 27/03/2009, rwemeza ko imikirize y'urubanza rwajuririye idahindutse mu ngingo zarwo zose, rutegeka ko urwo rubanza rurangizwa uko rwaciwe. [5] Kuwa 10/06/2010, Nkongori John yatanze ikirego mu Rukiko rw'ikirenga arega Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, Bwana Richard Masozera, kuba batarubahirije ibyemezo by'Inkiko byavuzwe haruguru, asaba ko bacibwa igihano kibahatira kurangiza izo manza batsindiwe. [6] Urubanza rwaburanishijwe mu ruhamwe kuwa 08/07/2010, NKONGORI John

yunganiwe na Me Rwangampuhwe, naho Rwanda Civil Aviation Authority na Richard Masozera batitabye kandi barahamagajwe mu buryo bwemewe n'amategeko. II. IBIBAZO BYASUZUMWA N'URUKIKO BIRI MU RUBANZA [7] Muri uru rubanza, Urukiko rugiye gusuzuma ibibazo bitatu bikurikira :

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1. Ese Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, baba bafite impamvu zifite ishingiro zababujije kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n'Urukiko rw'Ikirenga ?
 2. Ese Rwanda Civil Aviation Authority yafatanye n'Umuyobozi Mukuru wayo kwishyura amafaranga y'igihano gihatira kurangiza urubanza igihe bibaye ngombwa gucibwa igihano ?
 3. Ese muri uru rubanza Nkongori John yahabwa amafaranga yasabye ya "décompte finale" na "attestation des services rendus" n'ibindi agenerwa n'amategeko?
-
1. Ku byerekeye ikibazo cyo kumenya niba Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, baba bafite impamvu zifite ishingiro zababujije kurangiza urubanza R.AD.A 0012/07/CS. [8] Nkongori John avuga ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, Bwana Richard Masozera, banze kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n'uru Rukiko kuwa 27/03/2009. Asobanura ko urwo rubanza rwemeje ko imikirize y'urubanza R.AD. 0055/06/HC/KIG rwaciwe n'Urukiko Rukuru rwa Repubulika kuwa 15/06/2007 idahindutse, runategeka ko rugomba kubahirizwa uko rwaciwe. [9] Nkongori n'Umwunganira basobanuye ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo banze kumuha amafaranga yatsindiye mu rubanza rwavuzwe haruguru akurikira : 4.946.406 Frw y'ibiharane by'umushahara we w'amezi atandatu atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama. [10] Basabye ko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo bacibwa igihano kibahatira kurangiza urubanza R.AD.A 0012/07/CS kuko bagize agasuzuguro bakanga kururangiza. Ikindi n'uko Richard Masozera, Umuyobozi Mukuru w'icyo Kigo cya Leta, yanze kubahiriza amabwiriza yahawe n'Abayobozi bamukuriye mu kazi bamusabye kurangiza urwo rubanza barimo Minisitiri w'Ubutabera, Minisitiri w'Ibikorwa Remezo n'Umuwunye Mukuru, nyamara Leta y'u Rwanda yo yamwishyuye amafaranga yatsindiye muri urwo rubanza. [11] Ingingo ya 351 y'Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsu nk'uko ryahinduwe kandi ryujwe kugeza ubu, iteganya ko "Umutegetsu wanze kubahiriza ibyategetswe mu rubanza ashobora, bisabwe n'umuburanyi kururangiza bifiye inyungu, guhamagarwa mu rukiko rwafashe icyemezo, kugira ngo yisobanure ku mpamvu zamubujije kubyubahiriza. Iyo impamvu zatumye atabyubahiriza zifite ishingiro, ahabwa, hakurikijwe imiterere y'izo mpamvu, igihe ntarengwa agomba kubahiriza urwo rubanza. Iyo impamvu zatumye atabyubahiriza nta shingiro zifite (...), urukiko rugena igihano gihatira umutegetsu ubwe kubahiriza urubanza mu gihe cyose ruzaba rutararangizwa". [12] Hakurikijwe ibiteganywa n'ingingo ya 351 y'Itegeko rimaze kuvugwa haruguru, Urukiko rurasanga Umuyobozi Mukuru wa Rwanda Civil Aviation Authority ataritabye Urukiko umunsi w'iburanisha ry'urubanza kuwa

08/07/2010 kandi yarahamagawe mu buryo bukurikije amategeko, kugira ngo arusobanurire impamvu zatumye atarangiza urubanza R.AD.A 0012/07/CS rwaciwe n'uru Rukiko kuwa 27/03/2009, bigaragara rero ko nta mpamvu zifatika zamubujije kurangiza urwo rubanza.

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2. Ku byerekeye ikibazo cyo kumenya niba Rwanda Civil Aviation Authority igomba gufatanya n'Umuyobozi Mukuru wayo kwishyura amafaranga bacibwa y'igihano gihatira kurangiza urubanza. [13] Nkongori John yasabye ko uru Rukiko rwategeka Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo, gufatanya kumuha ibihumbi magana atanu (500.000 Frw) buri kwezi abazwe kuva igihe urubanza R.AD.A 0012/07/CS rwabereye itegeko kuwa 27/03/2009, kugeza bamwishyuye amafaranga yatsindiye. [14] Ingingo ya 350, igika cya mbere, y'Itegeko ryavuzwe haruguru iteganya ko "Iyo urubanza rwabaye itegeko rutegeka Leta, ubutegetsi bw'Akarere cyangwa bw'Umujyi cyangwa ubw'ikigo cya Leta kuriha amafaranga rwagenywe, ayo mafaranga agomba kwishyurwa mu mezi atandatu (6) uhaye ku munsu w'imenyeshwa ry'urubanza". [15] Dosiye igaragaza ko Urukiko rw'Ikirenga rwaciye urubanza R.AD.A 0012/07/CS kuwa 27/03/2009, ruvuga ko imikirize y'urubanza R.AD. 0055/06/HC/KIG rwaciwe n'Urukiko Rukuru rwa Repubulika kuwa 15/06/2007 idahindutse, rutegeka ko rugomba kurangizwa uko ruri. Bigaragara rero ko ubutegetsi bw'ikigo cya Leta, (Rwanda Civil Aviation Authority), bwategetswe kwishyura Nkongori amafaranga yatsindiye angana na 5.169.381 Frw agizwe n'amafaranga 4.946.406 y'ibitarane by'umushahara w'amezi atandatu (6) atahembwe, 200.000 Frw y'ikurikiranarubanza na 22.975 Frw y'amagarama. [16] Hakurikijwe ibisobanuro Nkongori John yatanze muri uru Rukiko by'uko Rwanda Civil Aviation Authority n'Umuyobozi Mukuru wayo banze kurangiza urwo rubanza; hakurikijwe kandi n'uko muri dosiye hatagaragaramo ibaruwa uyu Muyobozi yandikiye abayobozi bamukuriye mu kazi abamenyesha ko yarangije urwo rubanza, nyamara barabimusabaga, bigaragarira Urukiko ko urubanza R.AD.A 0012/07/CS rutarangiye, kuko Nkongori atahawe amafaranga yatsindiye yavuzwe haruguru, bityo kuba abisabira igihano gihatira kurangiza urubanza (astreinte), bikaba biri mu kuri nk'uko biteganywa n'ingingo ya 351 y'Itegeko n° 18/2004 ryo kuwa 29/01/2004 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi nk'uko ryahinduwe kandi ryujijwe kugeza ubu. [17] Ku byerekeye ugomba kwishyura amafaranga, hakurikijwe ibiteganywa n'ingingo ya 351 y'Itegeko n° 18/2004 ryavuzwe haruguru, bigaragara ko ari umutegetsi wanze kubahiriza ibyategetswe mu rubanza nta mpamvu; Urukiko rurasanga muri uru rubanza, uwo mutegetsi ari Umuyobozi Mukuru wa Rwanda Civil Aviation Authority kuko ariwe ushinze ubuyobozi bw'ibikorwa n'imirimo byacyo bya buri munsu nk'uko biteganywa n'ingingo ya 5 n'ya 6 z'Itegeko Ngenga n° 14/2004 ryo kuwa 26/05/2004 ryishyiraho amategeko rusange yerekeye ibigo bya Leta. [18] Urukiko rurasanga rero nta mpamvu yatuma Rwanda Civil Aviation Authority icibwa igihano kiyihatira kurangiza urubanza, kuko igihano kivugwa mu ingingo ya 351 yavuzwe haruguru, ari igihatira umutegetsi ubwe kubahiriza urubanza rwabaye itegeko, bityo Umuyobozi Mukuru wa Rwanda Civil Aviation Authority akaba ariwe ubwe ugomba gutanga amafaranga y'igihano gihatira kurangiza urubanza (astreinte) buri

kwezi kuva uru rubanza rusomwe kugeza ku munsu urubanza R.AD.A 0012/07/CS
ruzarangirizwaho kubera impamvu zavuzwe haruguru,

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amafaranga ibihumbi magana atanu (500.000 Frw) Nkongori asaba akaba agomba kuyahabwa
kuko Urukiko rusanga ari mu rugero.

3. Ku byerekeye ikibazo cyo kumenya niba Nkongori John yahabwa amafaranga ya “décompte finale” na “Attestation des services rendus” n’ibindi agenerwa n’amategeko. [19] Nkongori avuga ko Rwanda Civil Aviation Authority yamuha hamwe n’irangizarubanza yasabye, amafaranga ya “décompte finale”, “attestation des services rendus” n’ibindi yemererwa n’amategeko. [20] Muri uru rubanza, ikiburanwa ni ugusaba ko Rwanda Civil Aviation Authority n’Umuyobozi Mukuru wayo bacibwa igihano kibahatira kurangiza urubanza R.AD.A 0012/07/CS rwaciwe n’uru Rukiko. Ibyo Nkongori John asaba ko yahabwa “décompte finale” na “attestation des services rendus”, ntibyigeze bicirirwaho urubanza, kubivuga bwa mbere ubungubu, Urukiko rukaba rusanga byaba ari ukubiregera mu rwego rwa mbere mu Rukiko rw’Ikirenga kandi ibyo amategeko ntabyemera, bityo icyo kirego kikaba kitagomba kwakirwa. III. ICYEMEZO CY’URUKIKO [21] Rwemeye kwakira ikirego cya Nkongori John kuko cyatanze mu buryo n’inzira bikurikije amategeko. [22] Rwemeje ko icyo kibazo gifite shingiro kuri bimwe. [23] Rutegetse Umuyobozi Mukuru wa Rwanda Civil Aviation Authority guha Nkongori John amafaranga ibihumbi magana atanu (500.000 Frw) buri kwezi kuva uru rubanza rusomwe kugeza ku munsu urubanza R.AD.A 0012/07/CS ruzarangirizwaho. [24] Rumutegetse gutanga amagarama y’uru rubanza angana na 10.200 Frw, atayatangira mu gihe gitegetswe, akava mu bye ku ngufu za Leta.

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